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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 585

LUCILLE PUTZIER,

Appellant,

vs.

MARGARET RICHARDSON

Appellee.

STATEMENT AS TO JURISDICTION AND MATTERS INVOLVED

To the Honorable Harlan F. Stone, Chief Justice of the United States, and the Associate Justices of the Supreme Court of the United States and to the Honorable Archibald G. McCallister, Chief Justice of the Supreme Court of the State of Arizona:

Filed simultaneously with this statement is a petition to your honors praying that appellant Lucille Putzier, in appealed action number 4715 in the Supreme Court of the State of Arizona, be permitted by your honors to appeal to the Supreme Court of the United States from an order of the Supreme Court of the State of Arizona dismissing said appeal of appellant Lucille Putzier, she being also appellant herein.

Statement of Matter Involved

In civil action number 51419 in the Superior Court of Maricopa County, Arizona, the appellee Richardson, plaintiff in said action, sought a judgment on a promissory note signed by appellant Lucille Putzier. Judgment was rendered in favor of plaintiff on November 12th, 1942, for a total of $651.53, to bear interest at 6% per year. Execution issued November 30th, 1942, to the sheriff. The property involved, Lot No. 19 Greenfield Acres, Tract No. 2, according to map book 14, page 2, in Maricopa County, Arizona, was sold, after levy made without searching for personal property as required by the Arizona Statute, and without recording the judgment in the office of the recorder, also required by the Arizona Statute, on December 29th, 1942, for the sum of $673.97. Sale was made to the plaintiff Richardson, she satisfying the judgment in payment of the purchase price.

On June 23rd, 1943, defendant Putzier's attorney filed on her behalf a motion to set aside the execution, sheriff's return, sheriff's levy and sale. The motion, referred to in the petition for allowance of an appeal filed herewith, set forth items stating grounds principally as follows:

1. Premature filing of praecipe for and issuance of execution; and premature filing of formal judgment.

2. Falsity of a statement in the execution that the judgment was entered November 12, 1942, when in fact it was entered November 25, 1942.

3. Failure to place of record in the recorder's office a certified copy of the judgment as required by statute, and, consequently, the failure of placing a lien on the property to be sold.

4. Failure of the sheriff to make search for personal property or to certify that he had made such a search before selling realty.

5. At the time the sale was made the property was in fact in process of administration in probate matter number 16849 in the estate of Theodore M. Putzier, deceased, he being the husband of said Lucille Putzier, at the time of his death.

The motion to set aside the sale was overruled by the Maricopa County Superior Court on October 20th, 1943, and appeal to the State Supreme Court from the order overruling on December 18, 1943. Permission to appeal without giving a cost bond granted by the trial court. The record designated and filed in the State Supreme Court includes copies of the Judgment, Execution and Praecipe therefor with Return of Sheriff showing the sale on execution. Motion to set aside above referred to, Motion and Memorandum of authorities pertaining to the motion to set aside, Notice of Appeal, and matters pertaining to bond.

In the Supreme Court of Arizona Appellee filed motion to dismiss the appeal on April 22, 1944, and on April 28th a motion termed a "supplement" to the motion to dismiss. On April 26th, 2 days prior to the supplemental filing, appellant filed her objections and reply to the motion to dismiss the appeal. June 8th, 1944, appellant offered for filing her motion for rehearing and she was refused by the Supreme Court Clerk. On May 29th, 1944, the State Supreme Court dismissed the appeal by formal order entered that date. June 22nd appellant filed letter showing service on appellee's attorney, Mr. Zimmerman, of a copy of appellant's motion for rehearing offered June 8th for filing.

Appellant desires to obtain reversal of the judgments of the state courts and bases her appeal upon the grounds stated in the motion to set aside the execution and sale, and also the ground that due process of law has not been accorded to her as required by the Constitutions of the United States and the State of Arizona, particularly for the principal reason that the State Supreme Court violated it's

own rules and the statutes of the State of Arizona in denying to her the right to file her petition for a rehearing and have it duly considered by the Supreme Court of the State; and for the reason that she has been deprived of her property without due process of law and without just compensation.

Statement of Jurisdiction

Appellant contends that the Supreme Court of the United States has jurisdiction to review all proceedings in the State courts in said civil action number 51419, being, on appeal, number 4715 in the State Supreme Court of Arizona, for the following reasons and under laws and decisions cited as follows:

Judiciary Act of 1789, as amended by the Acts of January 31 and April 26th, 1928. See Chap. 14, 45 Statutes 54; Chapter 440, 45 Stat. 466; 28 U. S. C. A. Paragraphs 861a, 861b.

Cohens v. *Virginia,* 6 Wheat, 264, 410, 410, 5# L. Ed. 257;

Verden v. *Coleman,* 22 How. 192, 193, 16 L. Ed. 336;

Cedar Rapids L. Co. v. *Cedar Rapids,* 233 U. S. 665-668, 32 S. Ct. 389, 56 L. Ed. 594. Par. 346, page 708 "Robertson & Kirkham's", "Jurisdiction of the Supreme Court of the United States."

Article 14 Amendments to the United States Constitution provides that:

"1. * * * No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; NOR SHALL ANY STATE DEPRIVE ANY PERSON OF LIFE, LIBERTY, OR PROPERTY WITHOUT DUE PROCESS OF LAW; NOR DENY TO ANY PERSON WITHIN ITS JURISDICTION THE EQUAL PROTECTION OF THE LAWS."

When the Supreme Court of Arizona refused to appellant her right to file a motion for a rehearing of the order dismissing her appeal it thereby violated above constitutional provisions.

The rules of the Supreme Court of Arizona provide for filing motion for rehearings and is as follows:

(Arizona Code Annotated 1939, Section 21-1836)

"21-1836. CLERK TO GIVE NOTICE OF FILING OPINION-REHEARING.—Upon the filing of the opinion of the Supreme Court in a civil action, the clerk of said court shall immediately give notice in writing, by mail, to the attorneys of record of the respective parties, which notice shall state the date of the filing of the opinion and that the judgment or order appealed from is reversed, affirmed or modified. Any party desiring a rehearing may, within fifteen (15) days after the giving of such notice, file with the clerk of said court a motion in writing for a rehearing, specifying the particular grounds for the rehearing, and a copy of such motion shall be served upon the opposite party, or his attorney. (R. S. 1913 paragraphs 1274, 1275; cons. & rev., R. C. 1928, Sec. 3686."

The motion for rehearing was offered for filing just ten days after the order dismissing the appeal was made.

An abstract of the record in the Supreme Court will be prepared in due time and appellant prays for leave to file an amended statement as to jurisdiction showing references to pages in the abstract to be made when the same is available. The time for filing this statement will expire on August 28th, 1944, and there is not sufficient time as yet for the final preparation of the abstract of the record of proceedings in the State Supreme Court. The appellant was barred by the refusal to file the motion for rehearing from ever raising any Constitutional Question in the State Supreme Court.

WHEREFORE petitioner appellant prays that the judgments of the Superior Court of the State of Arizona in and for the County of Maricopa and the Supreme Court of the State of Arizona be reversed; and that time be given to make proper references to the pages in the abstract of the record to be prepared and above referred to; and for such other relief as that to which appellant may be entitled.

Respectfully submitted August 21st, 1944.

THOMAS A. FLYNN,
Attorney for the Petitioners.

Address of all counsel: 313 North Central Avenue, Phoenix, Arizona.

LUCILLE PUTZIER,
Petitioner,
313 North Central Avenue,
Phoenix, Arizona.

No. 585. PUTZIER *v.* RICHARDSON. Appeal from the Supreme Court of Arizona. November 20, 1944. *Per Curiam:* The appeal is dismissed for want of jurisdiction. § 237 (a), Judicial Code as amended, 28 U. S. C., § 344 (a). Treating the papers whereon the appeal was allowed as a petition for writ of certiorari as required by § 237 (c) of the Judicial Code, as amended, 28 U. S. C., § 344 (c), certiorari is denied. *Mr. Thomas A. Flynn* for appellant.